IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 243

BLOUNT BROTHERS CONSTRUCTION COMPANY,
Petitioner,

v.

J. P. GREATHOUSE STEEL ERECTORS, INC.,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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BRIEF OF PETITIONER IN REPLY TO RESPONDENT'S MEMORANDUM IN OPPOSITION TO PETITION FOR CERTIORARI

ARGUMENT

The petition for certiorari points out that the decision of the Court below is *in direct conflict* both with certain arbitration decisions of this Court and with certain arbitration decisions of several other courts of appeals.

Significantly, respondent's memorandum in opposition does not deny the conflict revealed by the petition. Unable to deny conflict in decisions respondent instead

attempts to obfuscate the issue by citing, not arbitration decisions of this Court, but a wholly irrelevant administrative law decision, *United States* v. *Utah Mining and Construction Company* (1966), 384 U.S. 394, concerning the statutorily-limited jurisdiction of an administrative agency created by executive order.

The *Utah* decision occupies 29 pages in the U.S. Reports, and more than fifty administrative law decisions are cited therein, but the word "arbitration" is nowhere mentioned.

The *Utah* decision is simply irrelevant to the issues raised in the petition. It does not reverse or qualify the prior decisions dealing with arbitration awards for the simple reason that it does not deal with arbitration awards. It does not hold that arbitration awards need to be explained; it does not hold that unexplained arbitration awards may be presumed invalid; it does not hold that, in situations dealing with *consensual* as opposed to *statutory* jurisdiction, parties may not waive jurisdictional limitations by their conduct. The decision of the court below does so hold, and in so doing conflicts with applicable decisions of this Court and with applicable decisions of other courts of appeals.

The adverse impact of the broad language of the decision below on the course of arbitration cannot be overstated. Almost all of the thousands of commercial arbitrations handled annually by the American Arbitration Association result in unexplained awards. Many, if not most, of the thousands of labor arbitration awards rendered each year are only partially explained. If the decision below is allowed to stand all of those wholly or partially unexplained arbitration awards are subject to attack by the losing party who need cite only the decision below, with its broad lan-

guage permitting a presumption of arbitrators' infidelity to arise from an unexplained award. In many cases labor arbitration will be largely nullified, for the underlying grievance will continue to fester while the parties, instead of complying with the award, argue in court over the fullness of the explanation accompanying the award, and whether any lack thereof infers a dereliction on the part of the arbitrators.

Whether these attacks in themselves are successful or unsuccessful will be important only to the individual parties to those arbitrations, but arbitration will tend to lose its appeal as a prompt and inexpensive remedial device, and the congestive effect upon the calendars of the various courts will be dramatic. Arbitration will tend to become merely the beginning of litigation, not the substitute for litigation and industrial strife.

CONCLUSION

For the reasons stated in the petition, and for the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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